

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JERRY M. JURY,

Plaintiff,

v.

L ROHER, DEPARTMENT OF
CORRECTIONS, CLINT MAY, PAT
GLEB, ELDON VAIL, BERNARD
WARNER, LT. BUTLER, DEVON
SCHRUM, DUNIVAN J DANE,
CATHERINE M SLAGLE, GRAYS
HARBOR COMMUNITY COLLEGE,
KEN FURU, WARSHAM, UNIT-H6
OFFICERS, WAKEFIELD,
CARPENTER, HUTCHINSON,
STROUP, JOHNSON, RENINGER,
CORNWELL, MICHAEL L.
MELOTRICH, RON WINEINGER, I&I
STAFF, WHALEY, CLARK, DONNY,
SCCC PROPERTY ROOM OFFICIALS,
SHAIRLY I ZAT, LEGAL LIASON
JOHN AND JANE DOE 1-10,

Defendants.

No. C12-5772 BHS/KLS

REPORT AND RECOMMENDATION

Noted For: November 9, 2012

Plaintiff Jerry M. Jury is presently confined at the Stafford Creek Corrections Center (SCCC). On October 12, 2012, the Court granted Plaintiff's application for leave to proceed *in forma pauperis*. ECF No. 12. Under separate Order, the Court is ordering Plaintiff to show cause why his complaint should not be dismissed for failure to state a claim under 42 U.S.C. § 1983.

1 At the time he filed his proposed complaint, Plaintiff filed a Motion for Temporary
2 Restraining Order/Preliminary Injunction. ECF No. 20. On October 12, 2012, Plaintiff filed a
3 Motion for Order to Show Cause Re Preliminary Injunction. ECF No. 24. Plaintiff seeks a
4 Court Order directing Defendants “to return Plaintiff’s personal legal materials, books, and
5 supplies [sic], which they confiscated from him from legal storage and in his cell.” *Id.*
6 Defendants have not been served with this motion. The undersigned recommends that the
7 Plaintiff’s motion be stricken from the Court’s docket at this time. The Court does not reach the
8 merits of Plaintiff’s motion.
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10 DISCUSSION

11 Under Federal Rule of Civil Procedure 65(a)(1), no preliminary injunction can be issued
12 without notice to the opposing party. A temporary restraining order may be granted under Rule
13 65(b), but only if:

- 14 1) it clearly appears from specific facts shown by affidavit or by the verified
15 complaint that immediate and irreparable injury, loss or damage will result
16 to the applicant before the adverse party or that party’s attorney can be
17 heard in opposition, and
- 18 2) the [applicant] certifies to the court in writing the efforts, if any, which
19 have been made to give the notice and the reasons supporting the claim
20 that notice should not be required.

21 If Plaintiff seeks relief from the Court, he must set forth his requests in a pleading or
22 motion and that he must serve copies of all pleadings and motions on all Defendants through
23 their counsel of record pursuant to Fed. R. Civ. P. 5(b)(1). Pursuant to Fed. R. Civ. P. 5(d),
24 Plaintiff is also required to attach and file a certificate of service stating that he has served all
25 Defendants with the pleading and/or motion every time he files and serves a document. Unless
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otherwise ordered by the Court, all motions will be decided without oral argument and parties are not to appear on the date the motion is noted unless directed. CR 7(b)(4).

Accordingly, the undersigned recommends that Plaintiff's motion (ECF No. 20) be **stricken from the Court's docket**. Plaintiff may file a motion for temporary restraining order and serve it on all Defendants. Plaintiff should keep in mind that any issues raised in any such motion must be related to the issues raised in his complaint and he must establish the following: (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury to the plaintiff if injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S.Ct. 365, 376, 172 L.Ed.2d 249 (2008) (quoting *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)). If Plaintiff does re-file his motion, he must also file a certificate of service stating he has served all Defendants, through their counsel, with the motion. The motion may be scheduled on the Court's calendar for the third Friday after filing and service of the motion.

CONCLUSION

The undersigned recommends that the Plaintiff's motion for preliminary injunction (ECF No. 20) and Motion for Order to Show Cause Re: Preliminary Injunction (ECF No. 24) be **stricken** from the Court's docket. The Court does not reach the merits of the Plaintiff's motion.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the

1 Clerk is directed to set the matter for consideration on **November 9, 2012**, as noted in the
2 caption.

3 **DATED** this 17th day of October, 2012.

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6 Karen L. Strombom
7 United States Magistrate Judge
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